

ESTTA Tracking number: **ESTTA314222**Filing date: **10/29/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	HBI Branded Apparel Enterprises LLC		
Entity	Corporation	Citizenship	Delaware
Address	1000 East Hanes Mill Road Winston-Salem, NC 27105 UNITED STATES		

Attorney information	Laura C. Miller Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101 UNITED STATES lamiller@kilpatrickstockton.com, wbryner@kilpatrickstockton.com
----------------------	--

**Applicant Information**

Application No	77340011	Publication date	10/20/2009
Opposition Filing Date	10/29/2009	Opposition Period Ends	11/19/2009
Applicant	Hosiery Network, Inc. Suite 1209 10 West 33rd Street New York, NY 10001 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 1994/01/01 First Use In Commerce: 1994/01/01  
All goods and services in the class are opposed, namely: Hosiery; Ankle socks; Socks; Socks and stockings; Tights; Leg warmers; Leggings; Sleepwear; Pajamas; Flip flops; Long underwear; Underwear; Footwear; Slippers; Knee highs; Knee-high stockings

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	891626	Application Date	08/18/1969
Registration Date	05/26/1970	Foreign Priority Date	NONE
Word Mark	L'EGGS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U039 (International Class 025). First use: First Use: 1969/08/08 First Use In Commerce: 1969/08/08 LADIES' HOSIERY AND PANTY HOSE

U.S. Registration No.	917285	Application Date	12/03/1970
Registration Date	07/27/1971	Foreign Priority Date	NONE

Word Mark	L'EGGS
Design Mark	

Description of Mark	NONE
Goods/Services	Class U039 (International Class 025). First use: First Use: 1970/02/16 First Use In Commerce: 1970/02/16 LADIES' HOSIERY AND PANTY HOSE


U.S. Registration No.	1252320	Application Date	06/09/1981
Registration Date	09/27/1983	Foreign Priority Date	NONE

Word Mark	NOTHING BEATS A GREAT PAIR OF L'EGGS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1981/01/20 First Use In Commerce: 1981/01/20 Pantyhose


U.S. Registration No.	1269999	Application Date	02/22/1983
Registration Date	03/13/1984	Foreign Priority Date	NONE


Word Mark	L'EGGS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1980/07/31 First Use In Commerce: 1980/07/31 Lingerie


U.S. Registration	1359332	Application Date	03/18/1985
-------------------	---------	------------------	------------

No.			
Registration Date	09/10/1985	Foreign Priority Date	NONE
Word Mark	L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1985/01/11 First Use In Commerce: 1985/01/11 [LEOTARDS,] TIGHTS [, WARM-UP SUITS, SHORTS]		


U.S. Registration No.	1406841	Application Date	01/02/1986
Registration Date	08/26/1986	Foreign Priority Date	NONE
Word Mark	LITTLE L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1985/12/16 First Use In Commerce: 1985/12/16 TIGHTS		

U.S. Registration No.	1759965	Application Date	11/08/1991
Registration Date	03/23/1993	Foreign Priority Date	NONE
Word Mark	LITTLE L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1990/09/01 First Use In Commerce: 1991/09/01 footwear including slippers and socks		


U.S. Registration No.	1850354	Application Date	08/16/1991
Registration Date	08/16/1994	Foreign Priority Date	NONE
Word Mark	L'EGGSWEAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1991/09/17 First Use In Commerce: 1991/09/17 footed and footless tights, hosiery, leggings, knee-highs, and socks		

U.S. Registration No.	1878708	Application Date	02/10/1994
Registration Date	02/14/1995	Foreign Priority Date	NONE
Word Mark	LITTLE L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 tights		

U.S. Registration No.	1964562	Application Date	03/23/1994
Registration Date	03/26/1996	Foreign Priority Date	NONE
Word Mark	LITTLE L'EGGS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1994/05/27 First Use In Commerce: 1994/05/27 pantyhose

U.S. Registration No.	1981491	Application Date	03/22/1994
Registration Date	06/18/1996	Foreign Priority Date	NONE
Word Mark	LITTLE L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1994/05/27 First Use In Commerce: 1994/05/27 pantyhose		

U.S. Registration No.	2420003	Application Date	04/09/1999
Registration Date	01/09/2001	Foreign Priority Date	NONE
Word Mark	BARE L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1999/12/26 First Use In Commerce: 1999/12/26 hosiery and pantyhose		

U.S. Registration No.	2491287	Application Date	06/11/1999
Registration Date	09/18/2001	Foreign Priority Date	NONE
Word Mark	L'EGGS CARE		


Design Mark	<b>L'EGGS CARE</b>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2001/05/24 First Use In Commerce: 2001/05/24 hosiery, pantyhose, tights [ and socks ]

U.S. Registration No.	2789707	Application Date	06/04/2001
Registration Date	12/02/2003	Foreign Priority Date	NONE
Word Mark	MY L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2001/09/01 First Use In Commerce: 2001/09/01 hosiery, pantyhose, tights and socks		

U.S. Registration No.	2953380	Application Date	04/15/2003
Registration Date	05/17/2005	Foreign Priority Date	NONE
Word Mark	CHOOSE SMART BY L'EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/07/15 First Use In Commerce: 2003/07/15 hosiery, pantyhose, tights, knee-highs and socks		

U.S. Registration No.	2963521	Application Date	03/31/2003
Registration Date	06/21/2005	Foreign Priority Date	NONE
Word Mark	L'EGGS MINI-EGGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/08/05 First Use In Commerce: 2003/08/05 hosiery, pantyhose, tights and knee-highs		

U.S. Registration No.	3313783	Application Date	07/13/2005
-----------------------	---------	------------------	------------

Registration Date	10/16/2007	Foreign Priority Date	NONE
Word Mark	BARE L'EGGS. BEAUTIFUL CURVES.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/10/02 First Use In Commerce: 2002/10/02 foundation garments		

Attachments	72377696#TMSN.gif ( 1 page )( bytes ) 73527585#TMSN.gif ( 1 page )( bytes ) 74220018#TMSN.jpeg ( 1 page )( bytes ) 74195182#TMSN.gif ( 1 page )( bytes ) 74488677#TMSN.jpeg ( 1 page )( bytes ) 74504290#TMSN.jpeg ( 1 page )( bytes ) 75678739#TMSN.gif ( 1 page )( bytes ) 75726791#TMSN.gif ( 1 page )( bytes ) 78669446#TMSN.jpeg ( 1 page )( bytes ) Notice of Oppn LEG LIFE.pdf ( 10 pages )(31315 bytes )
-------------	---

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Laura Miller/
Name	Laura C. Miller
Date	10/29/2009

***In the matter of U.S. Trademark Application Ser. No. 77/340,011  
Published in the Official Gazette on October 20, 2009***

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HBI BRANDED APPAREL	)	
ENTERPRISES, LLC,	)	
	)	
Opposer,	)	Opposition No. _____
	)	
vs.	)	Mark: LEG LIFE
	)	
HOSIERY NETWORK, INC.,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer HBI Branded Apparel Enterprises, LLC (“Opposer”), a limited liability company organized and existing under the laws of the State of Delaware and having a place of business at 1000 East Hanes Mill Road, Winston-Salem, North Carolina, 27105, believes that it will be damaged by registration to Applicant Hosiery Network, Inc. (“Applicant”), of the mark LEG LIFE for use in connection with “Hosiery; Ankle socks; Socks; Socks and stockings; Tights; Leg warmers; Leggings; Sleepwear; Pajamas; Flip flops; Long underwear; Underwear; Footwear; Slippers; Knee highs; Knee-high stockings” in International Class 25, as shown in U.S. Trademark Application Serial No. 77/340,011 and published in the *Official Gazette* on October 20, 2009 (the “LEG LIFE Mark”), and hereby opposes same.

As grounds for this opposition to registration of the LEG LIFE Mark, Opposer alleges the following:



## **FACTS COMMON TO ALL GROUNDS FOR OPPOSITION**

1. For many years, and since long before Applicant's actual or constructive first use of Applicant's LEG LIFE Mark, Opposer, together with its corporate affiliates and its predecessors-in-interest (collectively referred to hereinafter as "HBI"), has been engaged in the manufacture, distribution and sale, in interstate commerce, of a wide variety of clothing products, including without limitation, hosiery, pantyhose, footwear, leotards and tights.

2. For nearly forty (40) years, and since long before Applicant's actual or constructive first use of Applicant's LEG LIFE Mark, HBI has continuously used, and presently uses, various trademarks consisting of the designation "L'EGGS," or incorporating the designation "L'EGGS" together with other word and/or design elements (collectively the "L'EGGS Marks"), in interstate commerce throughout the United States in connection with the advertising, promotion, distribution, and sale of its hosiery, pantyhose, tights, socks, slippers, and other apparel products.

3. HBI owns the following registrations for the L'EGGS Marks on the Principal Register of the United States Patent and Trademark Office, together with all right, title and interest in the marks shown therein, and all of the business and goodwill represented thereby (collectively the "L'EGGS Registrations"):

<b><u>Trademark</u></b>	<b><u>Reg. No.</u></b>	<b><u>Reg. Date</u></b>	<b><u>Goods</u></b>
L'EGGS	891,626	May 26, 1970	Ladies' hosiery and pantyhose
L'EGGS (Stylized)	917,285	July 27, 1971	Ladies' hosiery and pantyhose
NOTHING BEATS A GREAT PAIR OF L'EGGS	1,252,320	Sep. 27, 1983	Pantyhose

<b><u>Trademark</u></b>	<b><u>Reg. No.</u></b>	<b><u>Reg. Date</u></b>	<b><u>Goods</u></b>
L'EGGS	1,269,999	Mar. 13, 1984	Lingerie
L'EGGS (Stylized)	1,359,332	Sep. 10, 1985	Tights
LITTLE L'EGGS	1,406,841	Aug. 26, 1986	Tights
LITTLE L'EGGS & Design	1,759,965	Mar. 23, 1993	Footwear including slippers and socks
L'EGGSWEAR (Stylized)	1,850,354	Aug. 16, 1994	Footed and footless tights, hosiery, leggings, knee-highs, and socks
LITTLE L'EGGS & Design	1,878,708	Feb. 14, 1995	Tights
LITTLE L'EGGS & Design	1,964,562	Mar. 26, 1996	Pantyhose
LITTLE L'EGGS	1,981,491	June 18, 1996	Pantyhose
BARE L'EGGS	2,420,003	Jan. 9, 2001	Hosiery and pantyhose
L'EGGS CARE	2,491,287	Sep. 18, 2001	Hosiery, pantyhose, [and] tights
MY L'EGGS	2,789,707	Dec. 2, 2003	Hosiery, pantyhose, tights and socks
CHOOSE SMART BY L'EGGS	2,953,380	May 17, 2005	Hosiery, pantyhose, tights, knee-highs and socks
L'EGGS MINI-EGGS	2,963,521	June 21, 2005	Hosiery, pantyhose, tights and knee-highs
BARE L'EGGS. BEAUTIFUL CURVES.	3,313,783	Oct. 16, 2007	Foundation garments

4. The above-listed L'EGGS Registrations are valid, subsisting and uncanceled. Registration Nos. 891,626; 917,285; 1,252,320; 1,269,999; 1,359,332; 1,406,841; 1,759,965; 1,850,354; 1,878,708; 1,964,562; 1,981,491; 2,420,003; 2,491,287; and 2,789,707 have been registered on the Principal Register for more than five (5) years.

5. As a result of HBI's long and continuous use of the L'EGGS Marks in connection with its products, and as a consequence of HBI's extensive advertising,

promotion, distribution and sale of such products under its L'EGGS Marks, the consuming public and the trade have come to recognize, and do recognize, the L'EGGS Marks as being used by HBI or by a single source, and associate and identify the goods offered and sold under the L'EGGS Marks with HBI or with a single source. HBI consequently derives an invaluable goodwill from this recognition, association, and identification by the consuming public and the trade.

6. Because of the high degree of inherent and acquired distinctiveness of the L'EGGS Marks, the length of time and extent to which HBI has used the L'EGGS Marks, the vast advertising and publicity of which the L'EGGS Marks have been the subject, the substantial trading area in which the L'EGGS Marks have been and are used, and the high degree of consumer recognition of the L'EGGS Marks, the L'EGGS Marks are well-known and famous trademarks, deserving of a broad scope of legal protection. Federal courts and the Board have previously concurred in this conclusion. For instance, the United States Court of Appeals for the Fourth Circuit has ruled that L'EGGS is a strong and well-known trademark. *See Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455 (4th Cir. 1996). Moreover, the Board has twice determined, after trials on the merits, that the L'EGGS Marks are famous trademarks in the field of hosiery and pantyhose. *See Sara Lee Corp. v. Mahmoud*, Opp. No. 91162134 (T.T.A.B. Dec. 27, 2007); *Sara Lee Corp. v. Goldstone Hosiery Corp.*, 2001 WL 253616 (T.T.A.B. Mar. 7, 2001).

7. On or about March 10, 1997, HBI opposed U.S. Trademark Application Serial No. 75/129,290, filed by Applicant's predecessor-in-interest E & E Hosiery Inc., for the mark LEGLIFE for "hosiery, leggings, leotards, tights, stockings, pantyhose, and footwear" in International Class 25 (the "LEGLIFE Application"). On January 9, 2001, the Board

sustained HBI's opposition to the LEGLIFE Application, and issued a judgment against Applicant, who had been substituted for its predecessor as the named Applicant before judgment was entered.

8. Despite HBI's previous successful opposition to the LEGLIFE Application, Applicant now seeks to register the LEG LIFE Mark on the Principal Register, by the application opposed herein, for use in connection with "Hosiery; Ankle socks; Socks; Socks and stockings; Tights; Leg warmers; Leggings; Sleepwear; Pajamas; Flip flops; Long underwear; Underwear; Footwear; Slippers; Knee highs; Knee-high stockings" in International Class 25.

#### **GROUND I – LIKELIHOOD OF CONFUSION**

9. HBI hereby incorporates by reference the allegations of Paragraphs 1 through 7 hereof as if fully set forth herein.

10. Applicant's LEG LIFE Mark is confusingly similar in sight, sound, and commercial impression to the previously used, well-known, and famous L'EGGS Marks.

11. The goods identified in the application opposed herein are identical to, overlap with, or are highly related to goods on which the L'EGGS Marks have been previously used.

12. Upon information and belief, Applicant's adoption of, and application to register, its LEG LIFE Mark were intentionally done with knowledge of HBI's prior opposition to the LEGLIFE Application and with a view and purpose of trading on and pirating away the substantial reputation and goodwill associated with the L'EGGS Marks. Upon information and belief, Applicant adopted the confusingly similar designation "LEG LIFE" in order to give its goods purchaser appeal and salability that such products would not otherwise possess.

13. Applicant's LEG LIFE Mark, when used in connection with Applicant's goods as identified in the subject application, so resembles HBI's previously used L'EGGS Marks as to be likely to cause confusion, to cause mistake, and/or to deceive members of the public concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under the L'EGGS Marks, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to HBI, the public, and the trade.

14. Applicant's LEG LIFE Mark is confusingly similar in sight, sound, and commercial impression to the previously registered, well-known, and famous marks shown in the L'EGGS Registrations.

15. The goods identified in the subject application for the LEG LIFE Mark are identical to, overlap with, or are highly related to goods identified in the L'EGGS Registrations. By way of example, and not by limitation, Applicant has sought to register the LEG LIFE Mark in connection with, *inter alia*, "hosiery," "socks," "leg warmers," "leggings," "knee-highs," "knee-high stockings," "tights," and "underwear," while HBI has already registered its L'EGGS Marks, as shown in the L'EGGS Registrations, for, *inter alia*, "hosiery" and "pantyhose" (Reg. Nos. 891,626; 917,285; 1,252,320; 1,850,354; 1,964,562; 1,981,491; 2,420,003; 2,491,287; 2,789,707; 2,953,380; and 2,963,521), "socks" (Reg. Nos. 1,759,965; 1,850,354; 2,789,707; and 2,953,380), "leggings" (Reg. No. 1,850,354), "tights" (Reg. Nos. 1,359,332; 1,406,841; 1,850,354; 1,878,708; 2,491,287; 2,789,707; 2,953,380; and 2,963,521), "lingerie" (Reg. No. 1,269,999), and "foundation garments" (Reg. No. 3,313,783).

16. Applicant's LEG LIFE Mark, when used in connection with Applicant's goods as identified in the subject application, so resembles the marks shown in the previously

registered L'EGGS Registrations as to be likely to cause confusion, to cause mistake, and/or to deceive members of the public concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under the L'EGGS Marks as shown in the L'EGGS Registrations, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to HBI, the public, and the trade.

17. Pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a), HBI believes it will be damaged by registration of Applicant's LEG LIFE Mark in that members of the purchasing public and/or the trade are likely to be confused or mistaken that Applicant's goods offered under Applicant's LEG LIFE Mark originate from HBI, or from the same source as goods sold under HBI's famous L'EGGS Marks and/or the registered marks shown in the L'EGGS Registrations, or that such goods of Applicant are sponsored by, endorsed by, or affiliated with the source of goods sold under the L'EGGS Marks and/or the registered marks shown in the L'EGGS Registrations. Such likelihood of confusion results in damage to the goodwill among purchasers and the trade that the L'EGGS Marks symbolize. Registration of Applicant's LEG LIFE Mark will support and assist Applicant in the confusing and misleading use of Applicant's LEG LIFE Mark, and, in addition, will give color and exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of HBI.

## **GROUND II – DILUTION OF THE FAMOUS L'EGGS MARKS**

18. HBI hereby incorporates by reference the allegations of Paragraphs 1 through 15 hereof as if fully set forth herein.

19. Because of the high degree of inherent and acquired distinctiveness of the L'EGGS Marks, the length of time and extent to which HBI has used the L'EGGS Marks,

the vast advertising and publicity the L'EGGS Marks have received, the national and international trading area in which the L'EGGS Marks are used, the wide recognition of the L'EGGS Marks by the general consuming public, and the numerous registrations for the L'EGGS Marks as shown in the L'EGGS Registrations, the designation "L'EGGS" is a famous mark pursuant to 15 U.S.C. § 1125(c)(1), and the designation "L'EGGS" became a famous mark long before Applicant's first use, actual or constructive, of Applicant's LEG LIFE Mark opposed herein.

20. Registration of Applicant's LEG LIFE Mark for use in connection with the goods identified in the application opposed herein would whittle away, disperse, and blur in the mind of the consuming public and the trade the identity of the L'EGGS Marks in relation to HBI, thereby lessening the capacity of HBI's famous L'EGGS Marks to identify and distinguish HBI's goods sold thereunder. Any use in commerce by Applicant of Applicant's LEG LIFE Mark would suggest an association arising from the similarity between Applicant's LEG LIFE Mark and the L'EGGS Marks that would impair the distinctiveness of the L'EGGS Marks.

21. Additionally, if the quality of the goods offered under Applicant's LEG LIFE Mark were of poor quality, any use by Applicant of Applicant's LEG LIFE Mark would likely tarnish the invaluable goodwill and reputation symbolized by the L'EGGS Marks. Thus, any use by Applicant of Applicant's LEG LIFE Mark would be likely to cause dilution of the famous L'EGGS Marks, in violation of 15 U.S.C. §§ 1052, 1125(c) and 1127.

22. Pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a), HBI believes it will be damaged by registration of Applicant's LEG LIFE Mark because such registration will support and assist Applicant in its diluting use of Applicant's LEG LIFE

Mark sought to be registered, and will give color and exclusive statutory right to Applicant, in violation and derogation of the prior and superior statutory and common law rights of HBI.

**WHEREFORE**, Opposer requests that registration of Applicant's LEG LIFE Mark, as shown in Application Serial No. 77/340,011 be refused.

The required fee for instituting this opposition proceeding is being submitted herewith. Please charge any deficiency or refund in the filing fee to Deposit Account No. 16-1435.

Please recognize William M. Bryner, Laura C. Miller, and the law firm of Kilpatrick Stockton LLP as attorneys for Opposer in connection with this opposition proceeding. Please address all correspondence regarding this proceeding to William M. Bryner at Kilpatrick Stockton LLP, 1001 West Fourth Street, Winston-Salem, NC 27101.

This the 29<sup>th</sup> day of October, 2009.

**/s/ Laura C. Miller**

William M. Bryner  
Laura C. Miller

Attorneys for Opposer  
HBI Branded Apparel Enterprises, LLC

KILPATRICK STOCKTON LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101  
Telephone: (336) 607-7300



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HBI BRANDED APPAREL	)	
ENTERPRISES, LLC,	)	
	)	
Opposer,	)	Opposition No. _____
	)	
vs.	)	Mark: LEG LIFE
	)	
HOSIERY NETWORK, INC.,	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been served on the attorney of record for Applicant Hosiery Network, Inc. by mailing said copy on October 29, 2009, via First Class Mail, postage prepaid, and addressed as follows:

Jeffrey Dweck  
The Law Firm of Jeffrey S. Dweck, P.C.  
100 W. 33<sup>rd</sup> Street  
Suite 1017  
New York, NY 10001-2914

**/s/ Laura C. Miller**  
Laura C. Miller

Attorney for Opposer  
HBI Branded Apparel Enterprises, LLC